



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable F. B. Caudle
County Attorney
Franklin County
Mt. Vernon, Texas

Dear Sir:

Opinion No. 0-3316
Re: What are legal costs as
contemplated in Sec. 4
of Art. 5561a, V.A.C.S.,
and related questions.

Your recent request for an opinion of this department on the questions as are herein stated has been received.

We quote from your letter as follows:

"I am writing you concerning the proper construction of Sec. 4 of Article 5561-A as passed by acts of 1957; RCS.

"This section deals with the restoration of sanity; procedure; effect of findings; and costs. This section provides that all cost of restoration shall be paid by the County.

"Article 5561, revised Civil Statutes, under Title 92, Lunacy, provides that Officers shall be allowed the same fees as are now allowed for similar services in misdemeanor cases. The question is:

"First: What are legal costs as is contemplated in Sec. 4?

"Second: Is the County Attorney allowed a fee for participation in a hearing on restoration of sanity and if so, under what circumstances?

"The usual procedure is the party seeking relief comes to the County Attorney or the County Judge who refers him to the County Attorney to draw up the proper affidavit for the doctor to sign. The affidavit is filed; the County Judge asks the County Attorney to make an investigation of the issue and to be present and to appear as counsel at the hearing.

"The above section provides that if there appears no doubt as to said issue of sanity the Judge may proceed to try the case without the intervention of a jury. The County Attorney took part in the hearing and concurred with the Judge that there was no doubt as to such issue, whereupon the Judge found the party of sound mind and requested the County Attorney to draw up a judgment reflecting his decision. In event the County Attorney concurs with the Judge on the question of the issue of sanity should the County Attorney file a written answer to that effect. In event the County Attorney does not agree with the Judge on the issue of sanity and contests same, would the County Attorney be entitled to a fee if the party is found to be of sound mind?

"In short, when is a County Attorney allowed a fee for services in a case under said section?

"In view of Article 5561, above mentioned, which allows the same fee as in misdemeanor cases for services in a lunacy trial, I concluded that the same fee (\$10.00) is a proper charge for the County Attorney under Sec. 4 of the above article mentioned herein under the foregoing state of facts, and that the County Judge, County Clerk, and Sheriff would be entitled to fees for services rendered under said Sec. 4."

Sections 4 and 5 of Article 5561a, Vernon's Annotated Civil Statutes, read as follows:

"Sec. 4. Upon the filing in the county court in which a person was convicted or in

the county court of the county in which a person is located at the time he is alleged to have had his right mind restored, information in writing and under oath made by a physician legally licensed to practice medicine in Texas, that a person not charged with a criminal offense, who has been adjudged to be of unsound mind, has been restored to his right mind, the judge of said court shall forthwith, either in term time or vacation, order said person brought before him by the sheriff of the county and if said issue be in doubt said judge shall cause a jury to be summoned and impaneled in the same manner as is provided for in Section 3 hereof and shall proceed to the trial of said issue, or if there appears no doubt as to said issue, said judge may try the same without the intervention of a jury, and if said person shall be found to be of sound mind, a judgment shall be entered upon the minutes of said court reciting and adjudging such fact and said person shall, if then under restraint, be immediately discharged, or in the event he shall be found to be still of unsound mind, he shall be returned by the county court to the place of restraint from which he had been previously ordered, and the original order of commitment shall continue in full force and effect. All costs of proceedings of restoration shall be paid by the county.

"Sec. 5. This Act shall be cumulative of Articles 5550 to 5561 inclusive of Title 92, Revised Civil Statutes of the State of Texas, 1925 revision."

Articles 5550--5561, inclusive, Vernon's Annotated Civil Statutes, and the first three sections of Article 5561a, provide for the apprehension, arrest and trial of persons not charged with criminal offense, alleged to be of unsound mind. It is further provided in such cases that the officer shall be allowed the same fees as are now allowed for similar services performed in misdemeanor cases, and the jurors shall each be allowed a fee of One Dollar (\$1.00), to be paid out of the estate of the defendant if he has an estate, otherwise by the county on accounts approved by the county judge. We do not think that the above statutes setting forth the procedure mentioned therein and

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providing certain compensation for officers have any application concerning or regarding restoration proceedings as mentioned in Section 4 of Article 5561a.

The manner and method of a restoration proceeding or hearing is specifically set out in Section 4, quoted above, and no duty is imposed upon the county attorney to represent the State in such a hearing or proceeding. The provision of Section 4, supra, providing "all costs of proceedings of restoration shall be paid by the county" is vague, uncertain, and indefinite. We believe the Legislature intended that all costs be paid in such proceedings, however, no method to determine the amount of such costs is prescribed as there is no "yard stick" by which to measure the amount of such costs. We think the provision "all costs of proceedings of restoration shall be paid by the county" is meaningless, and of no effect.

It must be remembered statutes prescribing fees for public officers are strictly construed; and hence a right to fees may not rest in implication. *McCalla v. City of Rockdale*, 246 S. W. 654.

The Constitution fixed the compensation of certain officers and authorized the Legislature to provide by law for the compensation of all officers, servants, agents and public contractors. Pursuant to the authority thus conferred, numerous statutes have been passed fixing the compensation of various classes of officers. An officer may not claim or reach any money without a law authorizing him to do so, and clearly fixing the amount to which he is entitled. *Binford v. Robinson*, 244 S. W. 807; *McLennan County v. Boggess*, 217 S. W. 346; *Duños v. Harris County*, 291 S. W. 611, affirmed 298 S. W. 417; *Crosby County Cattle Company v. McDeimett*, 281 S. W. 293.

In view of the foregoing, you are respectfully advised that it is the opinion of this department that there is no duty imposed upon the county attorney to represent the State in such proceedings as provided by Section 4 of Article 5561a, and said statute or any other statute does not provide any fees for the county attorney or any other officer conducting such hearings.

Trusting that the foregoing fully answers your inquiry,
we are

APPROVED APR 5, 1941

Gracelo Mann
ATTORNEY GENERAL OF TEXAS

AW:RS

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

